

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State Illinois,)

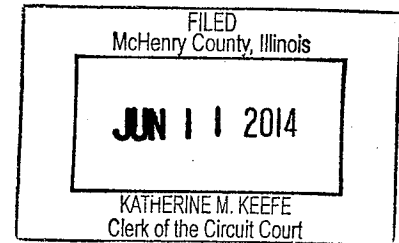
Plaintiff,)

v.)

No. 13 CH 1046

300 WEST LLC, an Illinois corporation,)
and THE ARNOLD ENGINEERING)
CO., an Illinois corporation a/k/a)
Arnold Magnetic Technologies)
Corporation,)

Defendants.)



SECOND AGREED PRELIMINARY INJUNCTION ORDER

This cause coming before this Court on Plaintiff's Motion for Preliminary Injunction; due notice having been given; the Court having jurisdiction over the parties and the subject matter herein; and the Court otherwise being duly advised in the premises;

NOW THEREFORE, Plaintiff having alleged that a substantial danger to the environment or to the health and welfare of persons exists pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2012) ("Act"), and the parties having agreed to the entry of this Second Agreed Preliminary Injunction Order, the Court enters the following preliminary injunction pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a) (2012), which shall remain in effect until further order of this Court. IT IS HEREBY ORDERED THAT:

I. BACKGROUND

1. Plaintiff incorporates by reference herein the allegations in its Verified Complaint for Injunction and Civil Penalties filed on June 14, 2013 (the "Verified Complaint"). On April 1, 2014, Defendant The Arnold Engineering Co. filed its Answer and Verification of Defendant The Arnold Engineering Co. On April 4, 2014, Defendant 300 West LLC filed its Answer to the Verified Complaint.

2. On June 14, 2013, this Court entered the Agreed Immediate Injunction Order.

3. On August 23, 2013, this Court entered the Agreed Preliminary Injunction Order. This Second Agreed Preliminary Injunction Order supercedes the Agreed Preliminary Injunction Order entered on August 23, 2013.

II. GENERAL PROVISIONS

4. This Order is not a final resolution of the merits of Plaintiff's Verified Complaint, but rather addresses current concerns regarding the groundwater contamination alleged in the Verified Complaint. This Order does not, nor is it intended to, determine the liability of the Defendants for the subject matter of the Verified Complaint, except as to their compliance with the requirements of this Second Agreed Preliminary Injunction Order itself.

5. This Second Agreed Preliminary Injunction Order and compliance therewith shall not be interpreted as constituting an admission to any of the allegations of the Verified Complaint to which both Defendants have filed an Answer.

6. This Order shall apply to and bind the Plaintiff and the Defendants.

III. CONTINUED ACTION

7. Bottled Water Delivery. The Defendants are currently providing bottled water to certain private water well owners and shall continue to provide an alternative source of drinking

water to the owners of the private water wells located at 4907 Ritz Road, 4913 Ritz Road, 4805 Ritz Road, 5010 Ritz Road, 5011 Ritz Road, 21902 Railroad St. and 22104 Railroad St. in Marengo, McHenry County, Illinois (collectively, the "Private Well Properties") by replenishing the water consumed by the residents in each Private Well Property so as to provide at least 2 gallons per person per day at each Private Well Property, on a weekly basis or such other schedule as agreed to in writing by the resident.

a. The Defendants shall continue distributing potable drinking water to each of the owners of the Private Well Properties until the Defendants receive written authorization from the Illinois Attorney General's Office and the Illinois EPA that they may cease such drinking water distribution or until such further Order of the Court.

b. The Defendants may submit a written request to the Illinois EPA to modify this Paragraph III.7. To the extent the Illinois EPA approves such written request, the parties may modify this Paragraph III.7. without further Order of the Court.

8. Well Water Sampling. The Defendants shall conduct water sampling at the private water wells as follows:

a. Subject to Paragraph III.8.h. herein, the Defendants shall cause water sampling to be conducted from the drinking water wells at the following properties in Marengo, McHenry County, Illinois (the "Water Sampling Properties"):

4501 Ritz Road	4106 Ritz Road
4210 Ritz Road	4805 Ritz Road
4907 Ritz Road	4913 Ritz Road
5011 Ritz Road	5017 Ritz Road
5010 Ritz Road	22110 Railroad St.
22104 Railroad St.	22012 Railroad St.
21902 Railroad St.	21816 Railroad St.
21820 Railroad St.	21606 Railroad St.
21602 Railroad St.	

b. The Defendants shall test each water sample for 1,1-Dichloroethylene, 1,1,1-Trichloroethane, cis-1,2-Dichloroethylene, 1,2-Dichloroethane, trans-1,2-Dichloroethylene, Trichloroethylene, Tetrachloroethylene, Vinyl Chloride, Chloroform, Bromodichloromethane, Bromomethane and 1,4-Dioxane (P-Dioxane) (collectively referred to herein as the "Chlorinated VOCs").

c. Prior to conducting the water sampling at the Water Sampling Properties, the Defendants shall provide at least twenty-four hour advance notice to the owners of the Water Sampling Properties and the Illinois EPA that such water sampling shall be conducted.

d. Commencing with the quarter beginning January 1, 2014, the Defendants shall conduct the water sampling on a date within the first 30 days of each quarter beginning January 1, April 1, July 1, and October 1 of each year.

e. Samples must be analyzed by an Illinois EPA certified laboratory.

f. The Defendants shall submit the results of such water sampling to the Illinois EPA within forty-five (45) days of the date that each water sampling event occurs.

g. The Defendants shall continue to conduct water sampling at the Water Sampling Properties until the Defendants receive written authorization from the Illinois EPA that they may cease conducting such sampling or until such further Order of the Court.

h. The Defendants shall promptly notify the Illinois EPA if they are unable to obtain access to any of the Water Sampling Properties to conduct the water sampling. To the extent an owner of a Water Sampling Property refuses to provide access for water

sampling on such property, within five (5) days after the scheduled sampling date, the Defendants shall provide the Illinois EPA with a notarized affidavit attesting as such.

IV. PRELIMINARY REMEDIAL ACTION BY DEFENDANTS

9. **Definitions.** For purposes of this Second Agreed Preliminary Injunction Order:

a. "Site" shall mean 300 North West Street, Marengo, McHenry County,

Illinois.

10. **Site Investigation**

a. ***Recognized Environmental Conditions.*** On or before June 6, 2014, the Defendants shall submit to the Plaintiff a list of all Recognized Environmental Conditions. The term "recognized environmental conditions" means "the presence or likely presence of any hazardous substances or petroleum products in, on, at or from a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. De minimis conditions are not recognized environmental conditions."

b. ***Focused Site Investigation Report.*** On or before June 6, 2014 or such later date to which all of the parties hereto and the Illinois EPA shall agree, the Defendants shall submit to the Plaintiff a response to the Illinois EPA's April 22, 2014 letter to the Defendants. On or before June 23, 2014 or such later date to which all of the parties hereto and the Illinois EPA shall agree, the Defendants shall submit to the Plaintiff a supplement to the November 20, 2013 Focused Site Investigation Report containing the results of the additional investigation of the Site required by the Illinois EPA in correspondence dated January 21, 2014 and

April 22, 2014, including any soil and groundwater contamination extending beyond the boundaries of the Site, which supplement shall meet the requirements of Attachments A and B hereto. Until the Plaintiff fully approves the Focused Site Investigation Report, the Defendants shall respond to Plaintiffs' conditions or deficiencies in writing within the timeframes set forth in the Plaintiff's written approvals with conditions or disapprovals.

11. ***Remedial Objectives Report.*** Within forty-five (45) days of the Plaintiff's approval of the Focused Site Investigation Report, the Defendants shall submit to the Plaintiff a Remedial Objectives Report that meets the requirements of Attachment C hereto. The Defendants may be required to submit separate soil and groundwater Remedial Objectives Reports. If the Plaintiff approves with conditions or disapproves of the Remedial Objectives Report(s), the Defendants shall, within the time set forth in the Plaintiff's written approval with conditions or disapproval, submit a proposal to the persons identified in Section V (Notices), that addresses all conditions or deficiencies identified by the Plaintiff. Until the Plaintiff fully approves the Remedial Objectives Report(s), the Defendants shall respond to Plaintiffs' conditions or deficiencies in writing within the timeframes set forth in the Plaintiff's written approval with conditions or disapproval.

12. ***Remedial Action Plan.*** Within forty-five (45) days of the Plaintiff's approval of the Remedial Objectives Report, the Defendants shall submit to the Plaintiff a Remedial Action Plan that includes a schedule for implementation and meets the requirements of Attachment D hereto. The Defendants may be required to submit separate soil and groundwater Remedial Action Plans. If the Plaintiff approves with conditions or disapproves of the Remedial Action Plan(s), the Defendants shall, within the time set forth in the Plaintiff's written approval

with conditions or disapproval, submit a proposal to the persons identified in Section V (Notices), that addresses all conditions or deficiencies identified by the Plaintiff. Until the Plaintiff fully approves the Remedial Action Plan(s), the Defendants shall respond to Plaintiffs' conditions or deficiencies in writing within the timeframes set forth in the Plaintiff's written approval with conditions or disapproval.

13. **Quarterly Reports.** Commencing on July 15, 2014, the Defendant shall submit Quarterly Reports to the Plaintiff by the fifteenth (15) day of the month following the end of each quarter after the date of entry of this Consent Order (ie., April 15, July 15, October 15 and January 15). Each Quarterly Report shall describe the work performed pursuant to this Consent Order during the previous quarter, the work anticipated during the next quarter, and any delays in work that may be anticipated. Quarterly Reports shall be submitted until such time that a final Remedial Action Completion Report is approved by the Plaintiff.

V. NOTICES

14. All submittals and correspondence relating to the requirements of this Order shall be directed to the following persons:

FOR PLAINTIFF

Kathryn A. Pamenter
Jamie D. Getz
Assistant Attorneys General
Illinois Attorney General's Office
Environmental Bureau North
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-0608
(312) 814-6986
KPamenter@atg.state.il.us
JGetz@atg.state.il.us
(*Electronic Copy*)

Michelle Ryan
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794
(217) 782-9817
Michelle.Ryan@illinois.gov
(*Electronic Copy*)

Tim Zook
Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794
(217) 524-3300
Tim.Zook@illinois.gov
(*2 Hard Copies; 1 Electronic Copy*)

FOR DEFENDANTS

300 West LLC
Attn: John Daley
2340 River Road, Suite 310
Des Plaines, Illinois 60018
312.420.6046

300 West LLC
Klein, Thorpe & Jenkins, Ltd.
c/o Dennis G. Walsh, Esq.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606
(312) 984-6400

The Arnold Engineering Co.
c/o Craig A. Sturtz, Esq.
Squire Sanders (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
614.365.2761

VI. DUTY TO COOPERATE

15. The Parties shall cooperate with each other in implementation of this Order.

VII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

16. This Order in no way affects the responsibilities of the Defendants to comply with any other federal, state or local laws or regulations, including but not limited to the Act.

VIII. STIPULATED PENALTIES

17. If the Defendants fail to complete any activity or fail to comply with any of the reporting requirements by the dates specified in this Order, the Defendants shall pay to Plaintiff stipulated penalties in the amount of \$250.00 per day, per violation, until such time that compliance is achieved. To the extent an owner of a Water Sampling Property refuses to grant access to the Defendants to conduct water sampling, this Section VIII shall not apply solely to the extent the Defendants comply with Paragraph III.8.h.

18. In the event Plaintiff determines that a violation that could be subject to stipulated penalties has occurred, Plaintiff will provide written notification of such violation to the Defendants and their representatives identified in Section V of this Order. Failure by Plaintiff to provide such written notification shall not be construed as a waiver of Plaintiff's right to seek stipulated penalties under this Order.

19. All stipulated penalties owed shall be payable within forty-five (45) calendar days of the receipt of written demand from Plaintiff, unless such penalties, or any portion thereof, are disputed by the Defendants, which dispute shall be resolved pursuant to Section X of this Order. All penalties shall be paid by certified check or money order payable to the "Illinois EPA" for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

The case name and case number shall appear on the face of the certified check or money order.

A copy of the certified check or money order and any transmittal letter shall be sent to:

Kathryn A. Pamenter
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St, 18th Flr.
Chicago, Illinois 60602

IX. COST RECOVERY

20. The Defendants shall reimburse the Illinois EPA for all reasonable and necessary future costs incurred and documented by the Illinois EPA in its oversight of the investigation of the Site and such other areas beyond the Site that the Defendants may be required to investigate and/or remediate for soil and groundwater contamination, and its review and evaluation of documents and reports submitted to it pursuant to the Second Agreed Preliminary Injunction Order consistent with the reimbursement of project costs incurred by the Illinois EPA under the Site Remediation Program, including, but not limited to, all costs associated with Community Relations activities ("Future Response Costs"). Future Response Costs shall mean all unpaid, reasonable and necessary costs incurred by the Illinois EPA on and after July 1, 2013. Future Response Costs shall include direct program costs, allocated program costs and indirect costs.

a. Direct program costs shall include, but are not limited to, all related payroll costs for all applicable organizational units, outside contractor/consultants fees, travel costs, and costs associated with photographs, maps, and laboratory services.

b. Allocated program costs represent program costs that are related to the overall program operations, including but not limited to, fiscal services, bill preparation and clerical duties, Division of Legal Counsel program meetings and regulatory preparation and implementation, and staff program meetings and management oversight for the Bureau of Land,

Bureau of Water, Office of Emergency Response, Toxicity Assessment Unit, and Office of Community Relations.

c. Indirect costs are those costs incurred by the Illinois EPA in day-to-day operations, including but not limited to, the operation and maintenance of buildings, utilities and administrative costs.

21. The Illinois EPA will submit to the Defendant on a quarterly basis invoices for Future Response Costs incurred during the billing period.

a. Within forty-five (45) days of the receipt of each invoice, the Defendant shall pay, unless contested pursuant to Section X (Dispute Resolution) of this Second Agreed Preliminary Injunction Order, the Future Response Costs detailed therein by means of a check or checks made payable to the Illinois Environmental Protection Agency for deposit into the Hazardous Waste Fund.

b. The case name, case number, LPC # 1110650003, LP52-62W, and the Defendants' FEIN numbers shall appear on the face of the check. The Defendants shall send each check and a copy of the Illinois EPA invoice to:

Division of Administration
Fiscal Services Section
Illinois EPA
1021 North Grand Avenue East
P. O. Box 19276
Springfield, Illinois 62794-9276

c. If the Defendants do not receive an invoice in the time frame indicated in Paragraph 21, this does not waive the Illinois EPA's right to submit an invoice or receive cost reimbursement for Future Response Costs.

d. A copy of the check(s) and the transmittal letter shall be sent to:

Kathryn A. Pamentor
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

22. The dispute resolution procedures set forth in Section X of this Second Agreed Preliminary Injunction Order shall be the exclusive mechanism for resolving disputes regarding the Defendants' obligation to reimburse the Illinois EPA for its Future Response Costs; except that for purposes of this Section IX only, the informal negotiation period shall be extended to twenty-one (21) days after written initiation of dispute resolution proceedings.

X. DISPUTE RESOLUTION

23. The parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Order, informally and in good faith, within seven (7) days of a party providing notice to the other parties of such a dispute. If, however, a dispute arises concerning this Order that the parties are unable to resolve informally, either party may, by written motion, within three (3) days of conclusion of the informal resolution efforts, request that an evidentiary hearing be held before the Circuit Court for the Twenty-Second Judicial Circuit, McHenry County, Illinois, to resolve the dispute between the parties. Upon Plaintiff's establishment of a prima facie violation of the Order, the Defendants shall bear the burden of proving that it did not violate this Order. Stipulated penalties shall not attach if the Defendants prevail in a dispute resolution.

XI. FORCE MAJEURE

24. The Defendants may declare *force majeure* in appropriate circumstances as follows:

a. A *force majeure* event is an event arising solely beyond the control of the Defendants, which prevents the timely performance of any of the requirements of this Order. For the purposes of this Order, *force majeure* shall include, but is not limited to, events such as, floods, fires, tornadoes, other natural disasters, labor disputes beyond the reasonable control of the Defendants, or prohibitions imposed by any court having jurisdiction over the Defendants.

b. When, in the opinion of the Defendants, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Order, the Defendants shall orally notify the Plaintiff within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) business days after the claimed occurrence.

c. Failure by the Defendants to comply with the notice requirements of the preceding paragraph shall render this *force majeure* provision voidable by Plaintiff as to the specific event for which the Defendants have failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

d. An increase in costs associated with implementing any requirement of this Order shall not, by itself, excuse the Defendants under the provisions of this Order from a failure to comply with such a requirement.

XII. RIGHT OF ENTRY

25. In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the portions of the Site owned by or under control of the Defendants and

which are the subject of this Order, at all reasonable times for the purpose of carrying out inspections of the Site. Plaintiff agrees to comply with any safety regulations in effect at the Site at the time of inspection. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary. Plaintiff shall provide upon the Defendants' written request copies of any photographs, files, records, data or information collected during said inspection.

XIII. EXTENSIONS AND MODIFICATIONS

26. The parties may, by mutual consent, extend any compliance dates or modify the terms of this Order without leave of court. Any such agreed modification shall be in writing, signed by authorized representatives of each party and incorporated into this Order by reference. Any request for modification shall be made by the Defendants in writing and shall be independent of any other submittal made pursuant to this Order. Moreover, notice of a request for any proposed modification shall be provided to the Plaintiff's representatives listed in Section V of this Order.

XIV. RESERVATION OF RIGHTS

27. Nothing contained herein shall be deemed at this time, and compliance with this order by the Defendants shall not be deemed, an admission of any wrongful conduct or violation of any applicable statute, law or regulations thereunder by the Defendants, nor a finding of fact or adjudication by this Court of any of the facts or claims contained in the Verified Complaint. Plaintiff reserves the right to seek additional technical relief and civil penalties in this matter.

28. This Order is without prejudice to and shall not act as a waiver of any right of contribution the Defendants may now or in the future have against any other person or entity.

XV. RETENTION OF JURISDICTION

29. This Court shall retain jurisdiction of this matter and shall consider any motion by Plaintiff or the Defendants for the purposes of interpreting and enforcing the terms and conditions of this Order.

XVI. SIGNATURE

30. This Order may be signed in counterparts, all of which shall be considered one agreement.

XVII. STATUS CONFERENCE WITH THE COURT

31. This matter is set for a status conference on June 26, 2014 at 9:15 a.m. without further notice.

[Remainder of Page Blank; Continued on Page 16]

WHEREFORE the parties, by their representatives, enter into this Second Agreed Preliminary Injunction Order and submit it to the Court that it may be approved and entered.

AGREED:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: Elizabeth Wallace
Elizabeth Wallace, Chief
Environmental Bureau
Assistant Attorney General

Date: 5/28/14

FOR DEFENDANT 300 WEST LLC

BY: _____

Name
Title

DATE: _____

FOR DEFENDANT THE ARNOLD ENGINEERING CO.

BY: _____

Name
Title

DATE: _____

ENTERED:

JUDGE

Date: _____

WHEREFORE the parties; by their representatives, enter into this Second Agreed Preliminary Injunction Order and submit it to the Court that it may be approved and entered.

AGREED:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: _____

Elizabeth Wallace, Chief
Environmental Bureau
Assistant Attorney General

Date: _____

FOR DEFENDANT 300 WEST LLC

BY: _____

Name Dennis G. Walsh
Title ATTORNEY FOR 300 WEST

DATE: 5/27/2014

FOR DEFENDANT THE ARNOLD ENGINEERING CO.

BY: _____

Name
Title

DATE: _____

ENTERED:

JUDGE

Date: _____

WHEREFORE the parties, by their representatives, enter into this Second Agreed Preliminary Injunction Order and submit it to the Court that it may be approved and entered.

AGREED:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: _____
Elizabeth Wallace, Chief
Environmental Bureau
Assistant Attorney General

Date: _____

FOR DEFENDANT 300 WEST LLC

BY: _____

Name
Title

DATE: _____

FOR DEFENDANT THE ARNOLD ENGINEERING CO.

BY: Craig A. Stutz
Name Craig A. Stutz
Title Attorney for the Arnold Engineering Co.

DATE: May 23, 2014

ENTERED: _____

Michael J. Chin
JUDGE

Date: _____

Attachment A

Site Investigation -- General

A site investigation shall be performed to identify all or specified recognized environmental conditions existing at the remediation site, the related contaminants of concern, and associated factors that will aid in the identification of risks to human health, safety and the environment, the determination of remediation objectives, and the design and implementation of a Remedial Action Plan.

- a) If the Defendants have elected under the application for review and evaluation services to obtain a No Further Remediation Letter covering all recognized environmental conditions and related contaminants of concern for the remediation site, then the procedures provided under 35 Ill. Adm. Code 740.420 and 740.425 shall be followed.
- b) If the Defendants have elected under the application for review and evaluation services to obtain a No Further Remediation Letter covering a limited number of recognized environmental conditions and related contaminants of concern as specified by the RA, then the procedures provided under 35 Ill. Adm. Code Sections 740.430 and 740.435 shall be followed.
- c) The Defendants may revise an election at any time by initiating a modification of the Review and Evaluation Services Agreement under 35 Ill. Adm. Code 740.220 and performing the appropriate site investigation, if necessary.
- d) Site investigations shall satisfy the following data quality objectives for field and laboratory operations to ensure that all data is scientifically valid and of known precision and accuracy:
 - 1) All field sampling activities relative to sample collection, documentation, preparation, labeling, storage, shipment and security, quality assurance and quality control, acceptance criteria, corrective action, and decontamination procedures shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control) and Vol. Two (Field Manual), incorporated by reference at 35 Ill. Adm. Code 740.125. If approved by the Agency, such activities also may be conducted in accordance with ASTM standards, methods identified in "A Compendium of Superfund Field Operations Methods" (EPA/540/0-87-001, OSWER Directive 9355.0-14, December 1987), "Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume I: Solids and Ground Water, Appendices A and B" (EPA/625/R-93/003a, May 1993),

"Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume II: The Vadose Zone, Field Screening and Analytical Methods, Appendices C and D" (EPA/625/R-93/003b, May 1993), incorporated by reference at 35 Ill. Adm. Code 740.125, or other procedures.

- 2) All field measurement activities relative to equipment and instrument operation, calibration and maintenance, corrective action, and data handling shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control), incorporated by reference at 35 Ill. Adm. Code 740.125, or with an equipment or instrument manufacturer's or vendor's published standard operating procedures.
- 3) All laboratory quantitative analysis of samples to determine concentrations of regulated substances or pesticides shall be conducted fully in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), incorporated by reference at 35 Ill. Adm. Code 740.125, relative to all facilities, equipment and instrumentation, operating procedures, sample management, test methods, equipment calibration and maintenance, quality assurance and quality control, corrective action, data reduction and validation, reporting, and records management. The practical quantitation limit (PQL) of the test methods selected must be less than or equal to the most protective Tier 1 soil remediation objectives in 35 Ill. Adm. Code 742 Appendix B, applicable groundwater remediation objectives under 35 Ill. Adm. Code 742 Appendix B, or, if already determined, the remediation objective concentrations for the site. If a contaminant of concern is not identified in 35 Ill. Adm. Code Part 742 or the remediation objectives for the site have not been determined, the PQL shall equal the lowest concentration that reliably can be achieved within specified limits of precision and accuracy during routine laboratory operating conditions but shall not be greater than ten times the method detection limit.
- 4) All field or laboratory measurements of samples to determine physical or geophysical characteristics shall be conducted in accordance with ASTM standards or other procedures as approved by the Agency.
- 5) All laboratory quantitative analyses of samples to determine concentrations of any regulated substances or pesticides that require more exacting detection limits or cannot be analyzed by standard methods identified in "Test Methods for Evaluating Solid

Waste, Physical/Chemical Methods" (SW-846), incorporated by reference at 35 Ill. Adm. Code 740.125, shall be conducted in accordance with analytical protocols developed in consultation with and approved by the Agency.

- 6) Effective January 1, 2003, all quantitative analyses of samples collected on or after that date and utilizing any of the approved test methods identified in 35 Ill. Adm. Code 186.180 shall be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186. Quantitative analyses not utilizing an accredited laboratory in accordance with Part 186 shall be deemed invalid.

Focused Site Investigation

The focused site investigation shall be performed where the Defendants have specified limitations on the recognized environmental conditions or contaminants of concern to be covered by the No Further Remediation Letter. At a minimum the focused site investigation shall include:

- a) A remediation site evaluation to identify the following features as relevant to the focus of the investigation:
 - 1) Current and post-remediation use(s) of the remediation site and surrounding areas that are immediately adjacent to the remediation site;
 - 2) Physical setting including features relevant to geologic, hydrogeologic, hydrologic, and topographic conditions; structures or other improvements on the remediation site; public thoroughfares adjoining the remediation site, as well any roads, streets, and parking facilities on the remediation site; utilities located on or adjacent to the remediation site; source of potable water supply; and sewage disposal system;
 - 3) The presence of containers and storage tanks containing the selected contaminants of concern, including contents, and assessment of leakage or potential for leakage; and
 - 4) Any other environmental, geologic, geographic, hydrologic or physical conditions of concern at the remediation site and surrounding areas immediately adjacent to the remediation site;
- b) Review of reasonably obtainable records relevant to the recognized environmental conditions and the related contaminants of concern for the remediation site and areas immediately adjacent to the remediation site, records of environmental enforcement actions and their subsequent responses, any previous response actions conducted by either local, State, federal or private parties, and a list of documents and studies prepared for the remediation site;

- c) Characterization of sources and potential sources of recognized environmental conditions and the related contaminants of concern, identifying:
 - 1) The sources or potential sources of the contaminants of concern;
 - 2) The sampling, analyses, and field screening measurements indicating the concentrations of the contaminants of concern; and
 - 3) The statutory or regulatory classification of the contaminants of concern and contaminated materials (e.g., hazardous waste, hazardous substance, special waste);
- d) Characterization of the extent of the contaminants of concern, identifying:
 - 1) The actual contaminated medium or media of concern;
 - 2) The three-dimensional configuration of the contaminants of concern with concentrations delineated; and
 - 3) The nature, direction, and rate of movement of the contaminants of concern and degradation products;
- e) Characterization of current and post-remediation exposure routes, identifying:
 - 1) All natural and man-made pathways that are on the remediation site, in rights-of-way attached to the remediation site, or in any areas surrounding the remediation site that may be adversely affected as a result of a release from the recognized environmental conditions and whether there is evidence of migration of contaminants of concern, in either solution or vapors, along such pathways that may potentially threaten human or environmental receptors or that may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other spaces;
 - 2) The locations of any human and environmental receptors and receptor exposure routes; and
 - 3) Current and post-remediation uses of affected or potentially affected land, groundwater, surface water, and sensitive habitats; and

Characterization of significant physical features of the site and vicinity that may affect contaminant transport and risk to human health, safety and the environment.

Attachment B

1. General

All plans and reports required by the Agreed Preliminary Injunction Order shall be submitted to the Plaintiff with attachments and accompanying documentation as necessary. Plans and reports shall be mailed or delivered to the address designated by the Order. Plans and reports that are hand-delivered to the Plaintiff shall be delivered during the Plaintiff's normal business hours.

All plans and reports submitted to the Plaintiff shall include:

- a) The full legal name, address and telephone number of the Defendant or any authorized agent acting on behalf of the Defendant, and any contact persons to whom inquiries and correspondence must be addressed;
- b) The original signature of the Defendant or of any authorized agent acting on behalf of the Defendant;
- c) The name of the Licensed Professional Engineer (LPE) or Geologist responsible for site activities and preparation of the plan or report, the date of preparation, registration number, license expiration date, and professional seal; and
- d) The LPE or Geologist responsible for the site investigations, remedial activities, and preparation of the plans or reports shall affirm by original signature as follows:

"I attest that all site investigations or remedial activities, including review of laboratory data, that are the subject of this plan or report were performed under my direction and this document and all attachments were prepared under my direction or reviewed by me, and, to the best of my knowledge and belief, the work described in the plan or report has been designed or completed in accordance with the Act, and generally accepted engineering practices, and the information presented, including any qualified laboratory data, is accurate and complete."

2. Site Investigation Report -- Focused Site Investigation

- a) Data and results from the focused site investigation shall be combined into one Site Investigation Report.
- b) A Site Investigation Report for the focused site investigation shall include the results and methodologies of the investigation performed pursuant to 35 Ill. Adm. Code 740.430 and the following chapters:
 - 1) Executive summary. This chapter shall identify the objectives of the site investigation and the technical approach utilized to meet such objectives. It shall state the recognized environmental conditions and related

contaminants of concern specified by the Defendants and the data limitations in the assessment;

2) Site description.

- A) If a phase I environmental site assessment has been completed in accordance with 35 Ill. Adm. Code 740.420(a), then the results may be submitted in accordance with 35 Ill. Adm. Code 740.425;
- B) This subchapter shall state the method used for the evaluation of the remediation site and areas immediately adjacent to the remediation site and document the observations obtained (e.g., grid patterns or other systematic approaches used for large properties). It shall describe the regional location, pertinent boundary features, general facility physiography, geology, hydrogeology, and current and post-remediation uses of the remediation site and areas immediately adjacent to the remediation site;
- C) Site base map(s) meeting the requirements of 35 Ill. Adm. Code 740.210(a)(7) and including the following:
 - i) The sources or potential sources of the contaminants of concern, spill areas, and other suspected areas for the specified contaminants of concern;
 - ii) On-site and off-site injection and withdrawal wells; and
 - iii) All buildings, tanks, piles, utilities, paved areas, easements, rights-of-way and other features, including all known past and current product and waste underground tanks or piping;
- D) A legal description or reference to a plat showing the boundaries of the remediation site, or, for a Federal Landholding Entity, a common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identifies the site in question with particularity;

3) Enforcement or response actions: This chapter shall include the following information as relevant to the recognized environmental conditions:

- A) A summary of environmental enforcement actions for the remediation site and areas immediately adjacent to the remediation site and their subsequent responses;
- B) Any previous response actions conducted by either local, State, federal or private parties at those sites; and
- C) A list of documents and studies prepared for those sites;

4) Site-specific sampling plan. This chapter shall indicate those applicable physical and chemical methods utilized for contaminant source investigations, soil and sediment investigations, hydrogeological

investigations, surface water investigations, and potential receptor investigations;

- 5) Documentation of field activities. This chapter shall include the results of the field activities to determine physical characteristics. At a minimum, this chapter shall include the following elements:
 - A) Narrative description of the field activities conducted during the investigation;
 - B) The quality assurance project plan utilized to document all monitoring procedures (e.g., sampling, field measurements and sample analysis) performed during the investigation, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented; and
 - C) Presentation of the data in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 6) Endangerment assessment. This chapter shall analyze the results of the field activities and characterize the extent of contamination (qualitative and quantitative) for contaminants of concern related to the recognized environmental conditions and compare the site information with the applicable provisions of 35 Ill. Adm. Code 742. This chapter shall:
 - A) Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases, and evaluate exposure routes excluded under 35 Ill. Adm. Code 742;
 - B) Describe the nature, concentration and extent of contaminants of concern within all environmental media at the remediation site and assess the observed and potential contaminant fate and transport;
 - C) Describe the significant physical features of the remediation site and vicinity that may affect contaminant transport and risk to human health, safety and the environment; and
 - D) Compare the concentrations of the contaminants of concern with the corresponding Tier 1 remediation objectives under 35 Ill. Adm. Code 742;
- 7) Conclusion. This chapter shall assess the sufficiency of the data in the report and recommend future steps;
- 8) Appendices. Supporting documentation, references and data sources, including, but not limited to, field logs, well logs, and reports of laboratory analyses, shall be incorporated into the appendices with reports containing laboratory analyses of samples collected on or after January 1, 2003,

including the following:

- A) Accreditation status of the laboratory performing the quantitative analyses;
 - B) Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of accreditation; and
- 9) Licensed Professional Engineer or Geologist affirmation in accordance with 35 Ill. Adm. Code 740.410.

Attachment C

Determination of Remediation Objectives

- a) If the site investigation reveals evidence of the existence of one or more contaminants of concern, the Defendants shall develop remediation objectives in accordance with 35 Ill. Adm. Code 742 or other remediation measures as appropriate (e.g., removal of drums threatening a release).
- b) Where there will be no reliance on an institutional control to achieve compliance, or where an institutional control will be relied upon to limit site use to industrial/commercial use, compliance with remediation objectives shall be demonstrated as follows:
 - 1) For groundwater remediation objectives:
 - A) Sampling points shall be located on the remediation site in areas where, following site investigation, concentrations of contaminants of concern exceeded remediation objectives.
 - B) Compliance with the groundwater remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.
 - 2) For soil remediation objectives:
 - A) Sampling points shall be located on the remediation site in areas where, following site investigation, concentrations of concern exceeded remediation objectives.
 - B) Compliance with soil remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.
- c) Where an institutional control or remediation measure will be relied upon to achieve compliance, compliance shall be determined based on approval by the Illinois EPA of the institutional control or remediation measure and the timely implementation of the institutional control or remediation measure (e.g., if an institutional control prohibiting the use of groundwater within the boundaries of the remediation site as a potable water supply is obtained under 35 Ill. Adm. Code 742 Subpart J, sampling points shall be located at the boundary of the remediation site).
- d) Upon completing the determination of remediation objectives, the Defendants shall compile the information into a Remedial Objectives Report meeting the requirements listed below for submittal to the Illinois EPA.

Remedial Objectives Report

The Remedial Objectives Report shall address the recognized environmental condition(s) and related contaminants of concern that were identified in the site investigation conducted pursuant to this Part.

- a) If an exposure route is to be excluded, the Defendants shall prepare a Remedial Objectives Report demonstrating that the requirements for excluding an exposure route under 35 Ill. Adm. Code 742 have been satisfied.
- b) If the Defendants elect to use the Tier 1 remediation objectives under 35 Ill. Adm. Code 742, the Defendants shall prepare a Remedial Objectives Report stating the applicable remediation objectives for the contaminants of concern.
- c) If the Defendants elect to develop remediation objectives appropriate for the remediation site using Tier 2 or Tier 3 procedures under 35 Ill. Adm. Code 742, the Defendants shall prepare a Remedial Objectives Report demonstrating compliance with those procedures.
- d) If the Defendants elect to develop remediation objectives appropriate for the remediation site using the area background procedures under 35 Ill. Adm. Code 742, the Defendants shall prepare a Remedial Objectives Report demonstrating compliance with those procedures.
- e) If the recognized environmental condition requires remediation measures other than, or in addition to, remediation objectives determined under 35 Ill. Adm. Code 742 (e.g., removal of drums threatening a release), the Remedial Objectives Report shall describe those measures and demonstrate that the measures selected:
 - 1) Will prevent or eliminate the identified threat to human health and the environment;
 - 2) Are technically feasible and can be implemented without creating additional threats to human health and the environment; and
 - 3) Are not inconsistent with the Act and applicable regulations.
- f) In the event that the Illinois EPA has determined in writing that the background level for a regulated substance or pesticide poses an acute threat to human health or the environment at the Site when considering the post-remedial action land use, the Defendants shall develop appropriate risk-based remediation objections in accordance with subsections (a), (b) and/or (c) above. (Section 58.5(b)(3) of the Act)
- g) The Remedial Objectives Report shall contain the affirmation of a Licensed Professional Engineer(s) in accordance with Paragraph 1(d) of Attachment A.

Attachment D

Remedial Action Plan

If the approved remediation objectives for any regulated substance of concern established under the Remedial Objectives Report are less than the levels at the remediation site prior to any remedial action, the Defendants shall prepare a Remedial Action Plan. The plan shall describe the proposed remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the remediation site [415 ILCS 5/58.6(d)], including but not limited to:

- a) Executive summary. This chapter shall identify the objectives of the Remedial Action Plan and the technical approach utilized to meet such objectives. At a minimum, this chapter shall include the following elements:
 - 1) The major components (e.g., treatment, containment, removal actions) of the Remedial Action Plan;
 - 2) The scope of the problems to be addressed by the proposed remedial action(s) including the specific contaminants of concern and the physical area to be addressed by the Remedial Action Plan; and
 - 3) Schedule of activities with estimated dates of completion;
- b) Statement of remediation objectives or reference to the Remedial Objectives Report;
- c) Remedial technologies selected. This chapter shall describe how each major remedial technology identified in the Remedial Action Plan fits into the overall strategy for addressing the recognized environmental conditions at the remediation site, including but not limited to:
 - 1) Feasibility of implementation;
 - 2) Whether the technologies will perform satisfactorily and reliably until the remediation objectives are achieved; and
 - 3) Whether remediation objectives will be achieved within a reasonable period of time.
- e) Confirmation sampling plan. This chapter shall describe how the effectiveness of the remedial action will be measured. At a minimum, a site-specific sampling plan and quality assurance project plan must be prepared.
- f) Current and post-remediation use of the property;
- g) Applicable engineered barriers, institutional controls, and groundwater monitoring. This chapter shall describe any such controls selected or relied upon in determining or achieving remediation objectives, including long-term reliability, operating and maintenance plans, and monitoring procedures;
- h) Appendices. References and other informational sources should be incorporated into the appendices; and

- i) Licensed Professional Engineer affirmation in accordance with Paragraph 1(d) of Attachment A.